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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,952	01/25/2002	James W. McCaherty	8350.0763-00	6974
58982	7590	09/06/2006	EXAMINER	
CATERPILLAR/FINNEGAN, HENDERSON, L.L.P.			FISHER, MICHAEL J	
901 New York Avenue, NW			ART UNIT	
WASHINGTON, DC 20001-4413			PAPER NUMBER	

3629

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,952

Applicant(s)

MCCAHERTY, JAMES W.

Examiner

Michael J. Fisher

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13,14,15-29,31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 4,605,081 to Helmly.

As to claims 1,17,33, Helmly discloses a computerized (fig 1) method for analyzing compliance with payload standard comprising a module for determining a target payload (160, as best seen in fig 5), obtaining weight data for equipment (158, as best seen in fig 5), a module for comparing the two and analyzing compliance (168, 166, as best seen in fig 5) and a module for outputting the results (fig 4). Helmly does not, however, teach calculating a modified target payload weight based on the analysis. It would have been obvious to use the data for analyzing and modifying the payloads as Helmly teaches the system as being used to comply with government regulations

Art Unit: 3629

(abstract, lines 4-8) and if a load is above legal limits the company would be in danger of legal action taken against it.

As to claim 40, it would be done periodically (whenever it needed to be done). The loading practice would be modified based on the target payload (the amount dispensed).

As to claims 2,18, Helmly discloses analyzing compliance (168, 166, as best seen in fig 5), analyzing compliance with a second payload standard (length of truck, 164, as best seen in fig 5) not equal to the first (weight).

As to claims 3,19, the target payload is based on type of payload (abstract, lines 8-13), it is inherent that different payloads would have different legal limits.

As to claims 4,5,20,21, Helmly discloses obtaining the empty weight (col 2, lines 20-22), as Helmly discloses it as being used more than once, it would inherently be done for two or more pieces of equipment of the equipment type (tractor-trailer). Helmly does not, however, teach averaging the weights of multiple equipments (fleet or not). It would have been obvious to one of ordinary skill in the art to average the weights of multiple trucks for statistical purposes such as determining an average for all trucks of the same type.

As to claims 6,22 it would be inherent that a target payload is that which is added to the empty weight to achieve target payload, therefore, it would have been obvious to do this subtraction to determine the proper load.

As to claims 7,23, as there is only one piece of equipment the mean would be the same as the payload value of the truck, so this would inherently be calculated, the

Art Unit: 3629

standard deviation would be zero, as there is no deviation as there is only one truck weighed, the distribution of payloads would be the value of the one payload, these values, while not expressly discussed, would inherently be calculated as they are the values determined in the steps.

As to claims 8,10,26, applicant has shown the percentage of acceptable overload to be old and well known in the art (paragraphs 2-6, starting on pg 1 of the specification of the instant application), as such, it would have been obvious to one of ordinary skill in the art to determine the percentages as the applicant has shown that this is well known. Compliance would have been checked using this standard.

As to claims 9,24, Helmly would have determined this if the payload weights were above the maximum threshold.

As to claims 11,27, Helmly discloses providing a compliance rating based on the comparison ("...within allowable weight", col 7, lines 43-51).

As to claims 12,28 Helmly determines the payload on a predetermined factor (maximum allowable weight).

As to claims 13,29 Helmly discloses graphically illustrating the results (fig 4).

As to claim 31, standard statistical analyses are not considered to be patentably distinct. As there is no step using the information, it would not be considered patentably distinct. Further, as there could only be one truck, the standard deviation would be 0 (zero) and thus, the offset would be zero and the final payload weight data would be unchanged.

Art Unit: 3629

As to claims 16,32, Helmly discloses determining equipment identification (col 5, lines 17-28).

As to claim 25, it would have been obvious to one of ordinary skill in the art to use the lesser of these values to ensure that the truck is compliant.

As to claims 34, 35, there is a network connection (fig 1).

As to claim 36, the output module is connected to a device to send data over a network (fig 1).

As to claim 37, there is shown to be a payload database (inherent in that the system is shown to have payload weight information, col 2, lines 4-10), a processor (fig 1), an equipment database (inherent in that there is shown to be information stored on the equipment) with payload standard information (what type of payload the vehicle can carry).

As to claim 38, it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void the warranty.

As to claim 39, it would have been obvious to have a standard and to determine the numbers as this would quantify the results.

As to claim 41, it would have been obvious to one of ordinary skill in the art to look at a trucks performance to schedule maintenance as maintenance is also based on regulatory requirements that include miles and hours.

Response to Arguments

Art Unit: 3629

Applicant's arguments, filed 6/22/06, with respect to claim 15,31 and 41 have been fully considered and are persuasive. The rejection of these claims has been withdrawn.

Applicant's arguments filed 6/22/06 with respect to the art rejection have been fully considered but they are not persuasive. As discussed, it would be obvious to use Helmly to ensure that the payloads meet regulatory requirements as Helmly is concerned with meeting regulatory requirements. As to arguments in relation to analyzing compliance, as discussed, Helmly is concerned with regulatory compliance (abstract, lines 4-8). As to arguments in relation to warranty, as trucks are assets and as the warranty is designed to take the financial burden off of the company, it would be obvious to use load data to ensure that the warranty provisions are met as voiding a warranty could entail considerable financial burden on the company.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3629

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Fisher whose telephone number is 571-272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MF 
9/5/06


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